UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

FUBOTV INC. and FUBOTV MEDIA INC.,

Plaintiffs,

-against-

THE WALT DISNEY COMPANY, ESPN, INC., ESPN ENTERPRISES, INC., HULU, LLC, FOX CORPORATION, and WARNER BROS. DISCOVERY, INC.,

Civil Action No. 24-cv-1363-MMG-JW

DECLARATION OF THOMAS G. SCHULTZ IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR PRELIMINARY **INJUNCTION**

Defendants.

- I, Thomas G. Schultz, hereby declare as follows:
- 1. I am an attorney at the law firm Kellogg, Hansen, Todd, Figel, & Frederick PLLC, and serve as counsel for fuboTV Inc and fuboTV Media Inc. (collectively, "Fubo") in this matter. I am submitting this declaration in support of Fubo's Reply in Support of its Motion for Preliminary Injunction. I have personal knowledge of the matters set forth in this declaration.
- 2. Attached as **Exhibit 1** is a true and correct copy of a March 28, 2016 article by Ed Desser titled "Handicapping the Netflix of sports: Win, place, show, scratch" published on LinkedIn.
- 3. Attached as Exhibit 2 is a true and correct copy of a June 12, 2017 article by Ed Desser titled "Sports media marketplace quickly evolving but still robust" published on LinkedIn.
- 4. Attached as **Exhibit 3** is a true and correct copy of a November 6, 2017 article by Ed Desser titled "Twelve Ways Sports Networks will adapt to evolving marketplace" published on LinkedIn.

- 5. Attached as **Exhibit 4** is a true and correct copy of a January 8, 2021 article by Ed Desser and John Kosner titled "The Fourth Quarter of Sports Media: Falling Bundles, Rising Streams" published in Sportico.
- 6. Attached as **Exhibit 5** is a true and correct copy of a September 1, 2023 Charter Communications presentation titled "The Future of Multichannel Video: Moving Forward, Or Moving On."
- 7. Attached as **Exhibit 6** is a true and correct copy of the April 16, 2024 Initial Pretrial Conference Transcript.
- 8. Attached as **Exhibit 7** is a true and correct copy of a May 21, 2021 article titled "Comcast Heralds NBA's Return to NBC as TNT Drama Unfolds" published in Sportico.
- 9. Attached as **Exhibit 8** is a true and correct copy of the June 17, 2024 Deposition Transcript of James Pitaro.
- 10. Attached as **Exhibit 9** is a true and correct copy of the June 19, 2024 Deposition Transcript of Sean Breen.
- 11. Attached as **Exhibit 10** is a true and correct copy of the June 20, 2024 Deposition Transcript of Bob Iger.
- 12. Attached as **Exhibit 11** is a true and correct copy of the June 21, 2024 Deposition Transcript of Justin Lancer.
- 13. Attached as **Exhibit 12** is a true and correct copy of the June 21, 2024 Deposition Transcript of Justin Warbrooke.
- 14. Attached as **Exhibit 13** is a true and correct copy of the June 24, 2024 Deposition Transcript of Bruce Campbell.

- 15. Attached as **Exhibit 14** is a true and correct copy of the June 27, 2024 Deposition Transcript of Justin Connolly.
- 16. Attached as **Exhibit 15** is a true and correct copy of the June 27, 2024 Deposition Transcript of John Nallen.
- 17. Attached as **Exhibit 16** is a true and correct copy of the June 28, 2024 Deposition Transcript of Alberto Horihuela.
- 18. Attached as **Exhibit 17** is a true and correct copy of the July 10, 2023 Expert Declaration of Ed Desser.
- 19. Attached as **Exhibit 18** is a true and correct copy of the July 10, 2023 Rebuttal Expert Declaration of Michael Whinston, Ph.D.
- 20. Attached as **Exhibit 19** is a true and correct copy of the July 11, 2024 Deposition Transcript of Peter Distad.
- 21. Attached as **Exhibit 20** is a true and correct copy of the July 13, 2024 Deposition Transcript of Gary Schanman.
- 22. Attached as **Exhibit 21** is a true and correct copy of the July 17, 2024 Deposition Transcript of Jonathan Orszag.
- 23. Attached as **Exhibit 22** is a true and correct copy of the July 22, 2024 Deposition Transcript of Michael Whinston.
- 24. Attached as **Exhibit 23** is a true and correct copy of the July 24, 2024 Deposition Transcript of Edwin Desser.
- 25. Attached as **Exhibit 24** is a true and correct copy of the July 26, 2024 Deposition Transcript of Anthony Petitti.

- 26. Attached as **Exhibit 25** is a true and correct copy of a July 30, 2024 letter from Nancy Pelosi to the Department of Justice regarding the live sports streaming TV venture.
 - 27. Attached as **Exhibit 26** is PX154, a true and correct copy of a
- 28. Attached as **Exhibit 27** is a true and correct copy of the August 1, 2024 Second Declaration of Robert Thun.
- 29. Attached as **Exhibit 28** is a true and correct copy of an August 1, 2024 article titled "Venu Sports Streaming Service to Cost \$42.99 a Month" published in The Wall Street Journal.
- 30. Attached as **Exhibit 29** is a true and correct copy of a webpage titled "The Fastest Time to Profit" as captured from Tipalti Approve on August 1, 2024.
- 31. Attached as Exhibit 30 is a true and correct copy of

 32. Attached as Exhibit 31 is a true and correct copy of a
 - 33. Attached as **Exhibit 32** is a true and correct copy of

Attached as Exhibit 33 is a true and correct copy of a 34.

Attached as Exhibit 34 is a true and correct copy of 35.

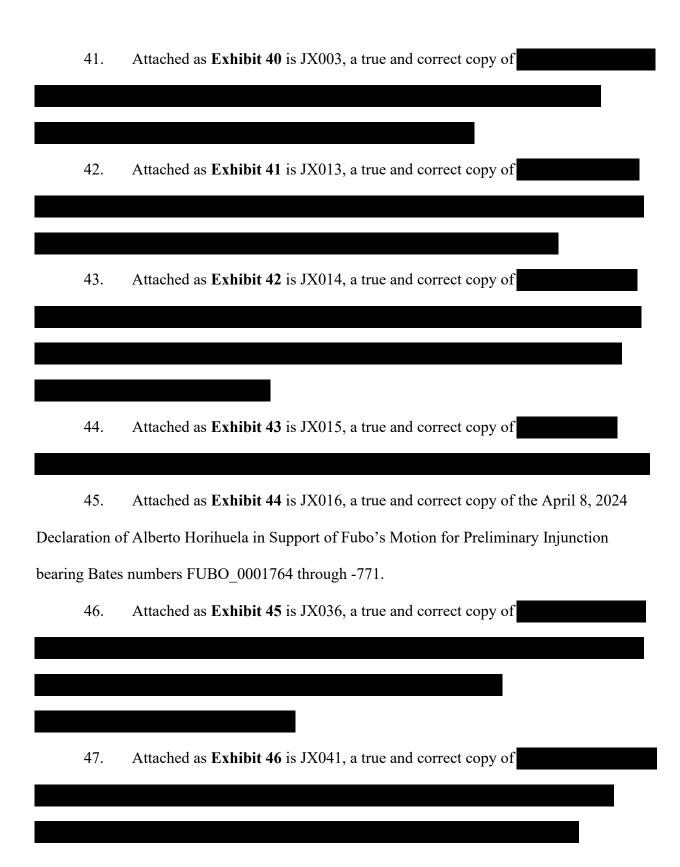
36. Attached as Exhibit 35 is a true and correct copy of

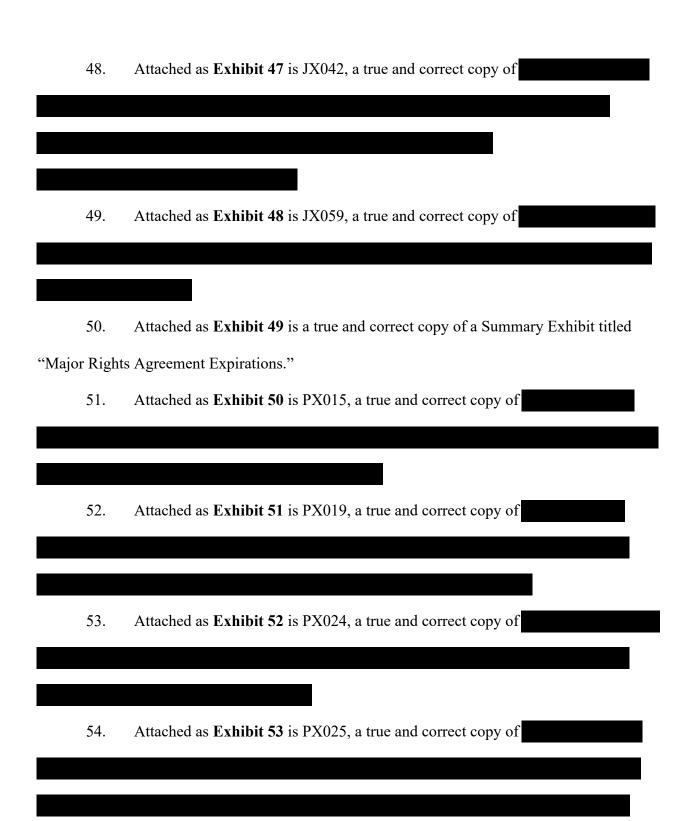
37. Attached as Exhibit 36 is a true and correct copy of

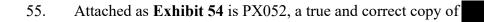
38. Attached as Exhibit 37 is a true and correct copy of

Attached as Exhibit 38 is a true and correct copy of 39.

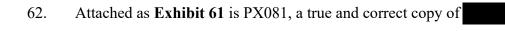
40. Attached as Exhibit 39 is JX001, a true and correct copy of







- 56. Attached as **Exhibit 55** is PX053, a true and correct copy of
- 57. Attached as Exhibit 56 is PX055, a true and correct copy of
- 58. Attached as Exhibit 57 is PX058, a true and correct copy of
- Attached as Exhibit 58 is PX059, a true and correct copy of 59.
- Attached as Exhibit 59 is PX061, a true and correct copy of 60.
- Attached as Exhibit 60 is PX076, a true and correct copy of 61.



63. Attached as Exhibit 62 is PX084, a true and correct copy of

64. Attached as Exhibit 63 is PX086, a true and correct copy of

65. Attached as Exhibit 64 is PX087, a true and correct copy of

- 66. Attached as Exhibit 65 is PX088, a true and correct copy of
- Attached as Exhibit 66 is PX089, a true and correct copy of 67.

68. Attached as Exhibit 67 is PX102, a true and correct copy of the April 8, 2024 Declaration of David Gandler in Support of Fubo's Motion for Preliminary Injunction bearing Bates numbers FUBO 0001737 through -746.

- 69. Attached as Exhibit 68 is PX103, a true and correct copy of the April 8, 2024 Declaration of John Janedis in Support of Fubo's Motion for Preliminary Injunction bearing Bates numbers FUBO 0001747 through -759.
- 70. Attached as Exhibit 69 is PX105, a true and correct copy of the April 8, 2024 Declaration of Todd Mathers in Support of Fubo's Motion for Preliminary Injunction bearing Bates numbers FUBO 0001772 through -781.
- 71. Attached as Exhibit 70 is PX116, a true and correct copy of the April 5, 2024 Declaration of Gary Schanman in Support of Fubo's Motion for Preliminary Injunction bearing Bates numbers FUBO 0002406 through -410.
- 72. Attached as Exhibit 71 is PX117, a true and correct copy of the April 5, 2024 Declaration of Robert Thun in Support of Fubo's Motion for Preliminary Injunction bearing Bates numbers FUBO 0002411 through -413.
- 73. Attached as Exhibit 72 is PX122, a true and correct copy the April 2024 Aluma Insights report titled "Consumer Receptivity to New Sports Streaming Services," produced by Fubo bearing Bates numbers FUBO 0002558 through -586.
- Attached as Exhibit 73 is PX134, a true and correct copy of 74. Attached as Exhibit 74 is PX175, a true and correct copy of 75.

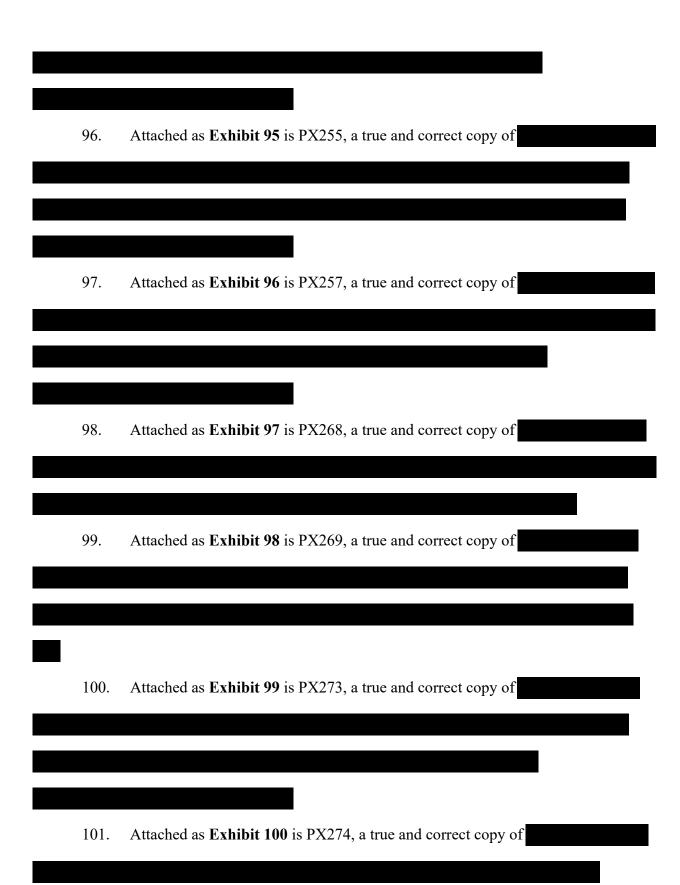
76	Attached as Exhibit 75 is PX176, a tr	ue and correct copy of
77	Attached as Exhibit 76 is PX178, a tr	ue and correct copy of
78	Attached as Exhibit 77 is PX182, a tr	ue and correct copy of
79	Attached as Exhibit 78 is PX183, a tr	ue and correct copy of
80	Attached as Exhibit 79 is PX188, a tr	ue and correct copy of
81	Attached as Exhibit 80 is PX190, a tr	ue and correct copy of
82	Attached as Exhibit 81 is PX192, a tr	ue and correct copy of

Attached as Exhibit 82 is PX204, a true and correct copy of the May 2024

83.

Horowitz presentation titled "State of Media, Entertainment, and Tech Volume II: Viewing		
Behaviors," produced by Fubo bearing Bates numbers FUBO_0169164 through -184.		
84	4. Attached as Exhibit 83 is PX207, a true and correct copy of a document last	
updated		
85	5. Attached as Exhibit 84 is PX211, a true and correct copy of	
86	6. Attached as Exhibit 85 is PX216, a true and correct copy of	
87	7. Attached as Exhibit 86 is PX220, a true and correct copy of	
88	3. Attached as Exhibit 87 is PX236, a true and correct copy of	

89.	Attached as Exhibit 88 is PX238, a true and correct copy of
90.	Attached as Exhibit 89 is PX242, a true and correct copy of
91.	Attached as Exhibit 90 is PX243, a true and correct copy of
92.	Attached as Exhibit 91 is PX245, a true and correct copy of
93.	Attached as Exhibit 92 is PX246, a true and correct copy of
94.	Attached as Exhibit 93 is PX251, a true and correct copy of
95.	Attached as Exhibit 94 is PX253, a true and correct copy of



102. Attached as **Exhibit 101** is PX275, a true and correct copy of

103. Attached as Exhibit 102 is PX282, a true and correct copy of

104. Attached as **Exhibit 103** is PX285, a true and correct copy of

105. Attached as Exhibit 104 is PX286, a true and correct copy of

106. Attached as **Exhibit 105** is PX289, a true and correct copy of

107. Attached as **Exhibit 106** is PX290, a true and correct copy of

108.	Attached as Exhibit 107 is PX319, a true and correct copy of
109.	Attached as Exhibit 108 is PX322, a true and correct copy of
110.	Attached as Exhibit 109 is PX325, a true and correct copy of
111.	Attached as Exhibit 110 is PX336, a true and correct copy of the February 7,
2024 Disney (Q1 FY24 Earnings Conference Call.
112.	Attached as Exhibit 111 is PX401, a true and correct copy of a slide titled "Other
services that F	Subo subscribers pay for."
113.	Attached as Exhibit 112 is PX404, a true and correct July 10, 2024 video titled
"Warner Bros.	. Discovery CEO David Zaslav Talks Sports Streaming Bundle 'Venu'" published
on CNBC.	
114.	Attached as Exhibit 113 is PX412, a true and correct copy of
115.	Attached as Exhibit 114 is PX413, a true and correct copy of

116. Attached as **Exhibit 115** is PX433, a true and correct copy of the March 13, 2018 Arbitration Agreement filed in connection with *United States v. AT&T Inc.*, and Time Warner Inc., Case No. 1:17-cv-02511-RJL (D.D.C.).

Case 1:24-cv-01363-MMG

- 117. Attached as **Exhibit 116** is PX434, a true and correct copy of the June 6, 2024 Comments of the ACA Connects filed in connection with *In the Matter of Fostering Independent and Diverse Sources of Video Programming*, MB Docket No. 24-115 (FCC).
- 118. Attached as **Exhibit 117** is PX436, a true and correct copy of the June 6, 2024 Comments of the American Television Alliance filed in connection with *In the Matter of Fostering Independent and Diverse Sources of Video Programming*, MB Docket No. 24-115 (FCC).
- 119. Attached as **Exhibit 118** is PX438, a true and correct copy of the July 26, 2024 Complaint filed in connection with *Turner Broadcasting Sys., Inc. v. National Basketball Assoc.*, Index No. 653721/2024 (N.Y. Sup. Ct.).
- 120. Attached as **Exhibit 119** is PX440, a true and correct copy of the June 27, 2018 Complaint filed in connection with *United States v. The Walt Disney Company et al.*, Case No. 18-cv-5800 (S.D.N.Y.).
- 121. Attached as **Exhibit 120** is PX442, a true and correct copy of an April 22, 2021 article by David Halberstam titled "In a changing world, TV experts Ed Desser and John Kosner share how fans will watch sports in the future" published in Sports Business Journal.
- 122. Attached as **Exhibit 121** is PX447, a true and correct copy of the April 16, 2024 letter from U.S. Representatives Jerrold Nadler and Joaquin Castro to Bob Iger, Lachlan Murdoch, and David Zaslav regarding the proposed sports streaming joint venture.

- 123. Attached as **Exhibit 122** is PX448, a true and correct copy of the June 7, 2024 letter from U.S. Representatives Jerrold Nadler and Joaquin Castro to Bob Iger, Lachlan Murdoch, and David Zaslav regarding the response to their April 16 letter.
- 124. Attached as **Exhibit 123** is PX151, a true and correct copy of a slide containing tables titled
- 125. Attached as **Exhibit 124** is PX453, a true and correct copy of the June 24, 2024 Updated Expert Declaration of James Trautman.
- 126. Attached as **Exhibit 125** is PX454, a true and correct copy of the June 24, 2024 Updated Expert Declaration of Jonathan Orszag.
- 127. Attached as **Exhibit 126** is PX456, a true and correct copy of
 - 128. Attached as **Exhibit 127** is a true and correct copy of
 - 129. Attached as **Exhibit 128** is a true and correct copy of an
 - 130. Attached as Exhibit 129 is PX129, a true and correct copy of

Attached as Exhibit 136 is JX022, a true and correct copy of

137.

	138.	Attached as Exhibit 137 is a true and correct copy of a
	139.	Attached as Exhibit 138 is a true and correct copy of
	140.	Attached as Exhibit 139 is a true and correct copy of a June 21, 2022 article titled
"Rever	se Stoc	k Split: Explanation, Pros & Cons," published in Seeking Alpha.
	141.	Attached as Exhibit 140 is PX270, a true and correct copy of
	142.	Attached as Exhibit 141 is PX310, a true and correct copy of
	143.	Attached as Exhibit 142 is PX003, a true and correct copy of
	144.	Attached as Exhibit 143 is PX191, a true and correct copy of

Pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct.

Executed: August 1, 2024

Thomas G. Schultz

Thomas G. Schultz